

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JOSEPH NARCISSE,

Plaintiff, : Case No. 3:07-cv-253

-vs- : District Judge Timothy S. Black  
SAMUEL A. BARHORST, Magistrate Judge Michael R. Merz

Defendant.

---

---

**DECISION AND ORDER STRIKING MOTION TO DISMISS**

---

---

This case is before the Court on Plaintiff's Motion to Dismiss the First Amended Intervening Complaint of Morrow, Morrow, Ryan and Bassett (Doc. No. 48), filed and served October 27, 2010.

The instant Motion purports to be brought under Fed. R. Civ. P. 12(b)(6). *Id.* at PageID 218. Examination of the docket discloses that on March 14, 2010, Plaintiff filed his Amended Answer to First Amended Intervening Complaint of Morrow, Morrow, Ryan and Bassett (Doc. No. 43). Fed. R. Civ. P. 12(b) provides that a motion seeking dismissal under Fed. R. Civ. P. 12(b)(6) "must be made before pleading if a responsive pleading is allowed." Because Plaintiff filed his answer before filing his motion to dismiss under Fed. R. Civ. P. 12(b)(6), the latter is not proper and is accordingly STRICKEN.

October 28, 2010.

s/ **Michael R. Merz**  
United States Magistrate Judge